

## **SCPD POLICY AND LAW COMMITTEE MEETING MINUTES**

**April 11, 2019**

**Smyrna Rest Area Conference Room, Smyrna**

**Members Present:** Marge Turner, Co-Chair/DSAAPD; Gene Aucott, Easter Seals; Kathie Cherry, GACEC; Moni Edgar, UCP-CAP; Brian Eng, DLP (for Laura Waterland); Jocelyn Langrehr, DOL/DVR; Jim Miller, Polio & Post Polio Support Group; Lauren Reynolds, FCIL-DE; Todd Webb, Chair/SCPD; Despina Wilson, IRI, Inc.; Kyle Hodges, Staff and Jo Singles, Support Staff.

### **CALL TO ORDER**

Marge called the meeting to order at 1:13 pm. Introductions were made.

### **ADDITIONS OR DELETIONS TO THE AGENDA**

None

### **APPROVAL OF MINUTES**

Jim made a motion to approve the minutes of March 14, 2019 as submitted. Gene seconded the motion. The minutes were approved as submitted.

### **REVIEW OF REGULATIONS AND LEGISLATION**

Brian reviewed the DLP Analysis (handout).

#### **Final Regulations**

1. Final DELACARE Regulations Regarding Early Care and Education and School-Age Centers, 22 Del. Register of Regulations 865 (April 1, 2019) – Agreement was made to write a letter thanking them for incorporating some of SCPD's recommendations consistent with the DLP Analysis.
2. Final DELACARE Regulations Regarding Family and Large Family Child Care Homes 22 Del. Register of Regulations 866 (April 1, 2019) - Agreement was made to write a letter thanking them for incorporating some of SCPD's recommendations consistent with the DLP Analysis.
3. Final DMMA Regulation Regarding Eligibility, 22 Del. Register of Regulations 859 (April 1, 2019) - Agreement was made to write a letter thanking them for incorporating some of SCPD's recommendations consistent with the DLP Analysis.
4. Final DHSS Regulation Governing Dialysis Centers, 22 Del. Register of Regulations 853 (April 1, 2019) – No action taken.

## Proposed Regulations

1. Proposed DDOE Regulation on Education of Children and Youth Experiencing Homelessness, 22 Del. Register of Regulations 832 (Apr. 1, 2019) – Brian made a motion that the SCPD support the amendment and that the Council recommend the following changes:
  - (1) Strike “Best Interest Meeting” from the definitions section since the term is not used in the regulation.
  - (2) Amend the definition of “School of Origin.”
  - (3) Amend Section 4.2 in the proposed amendment to clarify that school placement options are either the School of Origin or the School of Residence.
  - (4) Substitute “Unaccompanied Youth” for “Homeless Youth” in Section 4.5.1 of the proposed amendment.
  - (5) Add “Local” in front of School District in 4.4.1 and 4.4.3.1 of the proposed amendment.
  - (6) Add the phrase “or designee” following “Secretary” in 4.5.7 of the proposed amendment.

Gene seconded the motion. The motion was carried with no one opposing or abstaining.

2. DHCQ Proposed Regulations: Intensive Behavioral Support and Educational Residence (“IBSER”), 22 Del. Register of Regulations 839 (April 1, 2019) – Brian made a motion that the SCPD support the proposed regulation, as they provide more specificity and clarity to DHCQ’s requirements for IBSEs, as well as additional language emphasizing behavioral interventions should be individualized. Jim seconded the motion. The motion was carried with no one opposing or abstaining.
3. Proposed Department of Insurance Regulation Regarding Reporting Medical Management Protocols for Insurance Coverage for Serious Mental Illness and Drug and Alcohol Dependency, 22 Del. Register of Regulations 843 (April 1, 2019) – Brian made a motion that the Council support the proposed regulation since the proposed regulation adopts a model enforcement mechanism concerning mental health parity reporting developed by the National Association of Insurance Commissioners (NAIC). Moni seconded the motion. The motion was carried with no one opposing or abstaining.
4. Proposed Regulation Department of Insurance, Medicare Supplement Insurance Minimum Standards, 22 Del. Register of Regulations 846 (April 1, 2019) - Brian made a motion that the Council provide observations and acknowledge that the State did not really have a choice since the regulation implements the mandate of 18 *Del. C.* §3401 et seq. This was necessary so that Delaware retains the ability to regulate Medicare supplement insurance policies issued in the state. Senators Carper and Coons and Representative Rochester will be copied on the letter. Lauren seconded the motion. The motion was carried with no one opposing or abstaining.

## Proposed Legislation

SBs 24 and 59: Medical Marijuana – Brian made a motion to support these efforts to expand patient access to medical marijuana. S.B. 59 allows nurse practitioners and physician assistants

to recommend medical marijuana for patients. Gene seconded the motion. The motion was carried with no one opposing or abstaining. There was discussion about agencies receiving federal funding and their concern that this is not legal under federal law. Kyle noted that both of these bills have not yet come Out of Committee.

HB 73: Constitutional Amendment Eliminating Limitations on Absentee Voting – Brian made a motion that the SCPD support this legislation and further recommends that, with that support, the Council indicate a preference that the Legislature permit any voter to request an absentee ballot without the need to provide a reason for the request with no added restrictions. The SCPD should encourage the Department of Elections to investigate the Indiana system to see if something similar might be implemented in Delaware. Indiana has a mechanism whereby persons who need absentee ballots, but who require assistance completing the ballot and affidavit, can vote by absentee ballot with the assistance of a “traveling board.” Todd seconded the motion. The motion was carried with no one opposing or abstaining. There was discussion about the current language that needs to be changed because the type of disabilities should be irrelevant (the current provision permits absentee ballots for persons who need them “because of his or her sickness or physical disability”.) Also, there is no rule that allows caregivers to obtain an absentee ballot. If the Legislature were able to set the rules for absentee ballots by statute instead of having to amend the constitution, it would be much easier to create a specific rule for caregivers that would cover all caregivers. Making any changes to the constitution involves a two-year process. Despina added that what should remain constant regardless of who is in the General Assembly is that the protections of persons with disabilities still have the right to do absentee ballots.

HB 100: Mental Health Units for High-Risk K-5 Schools – Brian made a motion that the SCPD support this legislation and share concerns and recommendations. Todd seconded the motion. The motion was carried with no one opposing or abstaining. After discussion, Lauren made another motion that the following comments be added. Our primary concern is that 1) it is unclear if Licensed Professional Counselors of Mental Health are included in the clinicians that provide mental health services; 2) that the legislation be amended that anyone fulfilling the roles created by the legislation have appropriate training in mental health services. Lauren seconded the motion. The motion was carried with no one opposing or abstaining.

H.B. 101: School-Based Health Centers – Brian made a motion that the SCPD strongly support the concept of the bill, while making the following clarifications and recommendations:

- (1) Clarify the definition of “high needs elementary school” by asking what dataset will be used for quartile determinations, and by asking whether subsection (3)(b) is intended to include schools where 90 percent of the student body, in total, is comprised of students who are low-income, English learners or minorities *or* whether a school must have 90 percent of its students fall into either the low-income, or English learner, or minority category to qualify under (3)(b) as a high needs elementary school.
- (2) Recommend the Legislature change how it refers to the different types of public schools identified in § 4126(b)(1),(2), and clarify for which types of schools the Legislature intends for the State to cover health center start-up costs. Assuming the Legislature wishes to cover vocational-technical high schools and high needs charter elementary schools, Councils may wish to request the Legislature amend section (c).

- (3) Recommend the Legislature add a provision to the definition of high needs elementary schools to allow elementary schools with high numbers (but perhaps low percentages) of students who have disabilities, are low-income, minorities or English Learners to qualify as high needs even if they do not meet either of the other two criteria.
- (4) Change “English Learner” to “English Language Learner.”

Kathie seconded the motion. The motion was carried with no one opposing or abstaining. Brian made another motion that the Council strongly supports the inclusion of medical services such as those described in the bill in schools because it will benefit all students and particularly students with disabilities. The Council is concerned how those decisions will be made in the current language involving quartiles unless the plan is to put one of these centers in every school. Gene added that we ask that they revisit the allotment process. Also add additional language that their intent should have been to include charter and vo-tech high schools in the start-up. Despina seconded the motion. The motion was carried with no one opposing or abstaining.

HB 102: Criminal Record Relief for Survivors of Human Trafficking – Brian made a motion that the SCPD endorse this bill since it will greatly expand access to criminal record relief for human trafficking survivors who committed crimes because of their victimization. People with disabilities face increased risk of human trafficking. In doing so, this bill will help survivors avoid the far-reaching consequences of a criminal record and help maximize their ability to secure independence and stability. Despina seconded the motion. The motion was carried with no one opposing or abstaining.

HB 103: Division of Substance Abuse and Mental Health - Brian made a motion that the SCPD endorse this bill, and encourage the promulgation of regulations to formalize provider standards as well as eligibility, admission and discharge procedures for community behavioral health services in accordance with Medicaid rules. Despina seconded the motion. Marge had concern about the limiting population being addressed. The person has to be long term and persistent. Many fall outside of this limited group and their needs are not being addressed. The motion was carried with no one opposing or abstaining. Brian stated that their role needs to be formalized. Brian made a motion that this might be an opportunity to say that DSAMH needs to serve more people. Moni seconded the motion. The motion was carried with no one opposing or abstaining.

HB 104: Behavioral and Mental Health Commission – Brian made a motion that the SCPD may wish to endorse the legislation or decide not to comment. After discussion, a decision was made by hand count that SCPD would not comment. Motion was carried with no one opposing or abstaining.

HB 105 – Creating a Step Therapy Exception Process – Brian made a motion that SCPD endorse this effort to limit insurers’ ability to require step therapy. Step therapy places significant burdens on physicians and patients, and has been shown to have a negative impact on patients, including delayed access to the most effective treatment. This bill is an effective first step toward prioritizing patient care over insurer profit. Todd seconded the motion. The motion was carried with no one opposing or abstaining.

DMMA Proposed State Plan Amendment for Pathways Program, 22 Del. Register of Regulations 871 (April 1, 2019) – Brian made a motion that the Council strongly endorse this application.

Todd seconded the motion. Kyle noted that most people in this program are those with developmental disabilities. There are very few with visual or physical disabilities. Jocelyn clarified that people only qualify for this if you are on Medicaid and not a DVR consumer. DVI starts serving people at age 14 so they would provide the services. Any disability would be served by DVR or DVR/DVI starting at age 16 and transition services at age 14. Medicaid is the payor of last resort. The motion was carried with no one opposing or abstaining.

## **LEGISLATIVE UPDATE**

Brian spoke about draft legislation (handout) which would provide dental coverage to people on Medicaid. The motion is to support the draft legislation and recommend changes regarding co-pays and qualifying conditions as outlined in the draft legislation. The SCPD recommends that the list of statutorily required procedures be reviewed to ensure that it is sufficiently comprehensive, for example, dentures. Also, that the SCPD (1) advocate for a removal of the “multiple conditions” requirement to access emergency funding and (2) advocate for access to the emergency funding for anyone with a condition that “can or [does] cause pain” *and* anyone with a condition likely to cause permanent disfigurement *and* anyone whose condition is likely to result in that person needing significant additional medical care if the condition is left untreated. Todd seconded the motion. The motion was carried with no one opposing or abstaining. It was noted that Delaware is one of three states that does not provide dental care for Medicaid recipients. Kyle spoke about a meeting with Senator Townsend, along with Todd, John and Terri Hancharick. They received a copy of the draft legislation. The co-pays have been discussed and will mostly likely be lower. Kyle stated that SCPD comments were given to Senator Bryan Townsend (handout) and referenced the DLP analysis. This legislation has not been introduced.

Kyle spoke about S.B. 28, which increases the fines for illegally parking in accessible parking space. The SCPD comments (handout) were sent to the Delaware House Public Safety & Homeland Security Committee. He noted that SCPD commented that this legislation does not ensure that places of public accommodation have adequate accessible parking. He referenced a chart showing the number of tickets given by various police agencies. The SCPD also recommended better enforcement of existing laws regarding this.

## **OTHER BUSINESS**

None

## **ANNOUNCEMENTS**

None

## **PUBLIC COMMENT**

None

## **ADJOURNMENT**

The meeting adjourned at 3:26 pm.

Respectfully submitted,

Jo Singles  
Support Staff  
policy & law/min 4-11-19